



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6599777

Date: JAN. 14, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for EB-2 classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including,

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented his Bachelor of Economics degree (February 2008) from the [REDACTED] [REDACTED] and an academic credentials evaluation indicating that the aforementioned degree is the foreign "equivalent of a four-year Bachelor of Arts Degree in Economics from an accredited college or university in the United States." In addition, he submitted a July 2017 letter from [REDACTED] Chief Financial Officer (CFO) of [REDACTED] in [REDACTED] and former CFO of [REDACTED] in [REDACTED]. [REDACTED] stated that the Petitioner worked for him at [REDACTED] [REDACTED] as a financial analyst from 2008 until 2013, and at [REDACTED] as a financial specialist from February 2016 until the petition's filing date.⁴ The record also includes a November 2015 letter from [REDACTED] indicating that the Petitioner was employed as financial controller beginning in June 2013. We find that the aforementioned letters offer sufficient information to demonstrate that the Petitioner has at least five years of progressive post-baccalaureate experience in finance to constitute the equivalent to an advanced degree in that specialty. See 8 C.F.R. § 204.5(k)(2)

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ [REDACTED] further noted that [REDACTED] was acquired by [REDACTED] in 2012.

and 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Petitioner has established that he qualifies for classification as a member of the professions holding an advanced degree.⁵

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. For the reasons discussed below, we find the Petitioner has not demonstrated eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

Regarding the Petitioner's claim of eligibility under *Dhanasar*'s first prong, he stated that his "proposed endeavor is to continue to facilitate the transfer of millions of dollars of 'clean' investment funds from legitimate sources in Eastern Europe and Baltic States for investment into real estate developments in [redacted] and other major U.S. cities experiencing housing shortages." The Petitioner further explained that his proposed undertaking involves vetting "funds obtained from [redacted] and other Eastern European countries for investment into U.S. ventures, ensuring compliance with [the Foreign Account Tax Compliance Act (FATCA)] and the May 2015 Agreement about FATCA." He also asserted that these funds "serve as essential 'key money' for much-needed residential real estate development in [redacted] [redacted] and other U.S. cities, as well as the cornerstone upon which [the Petitioner] structures presentations to banks to obtain the remainder of the financing for development projects, putting the full 'financial package' together that facilitates the building of real estate projects." Furthermore, the Petitioner indicated that "in addition to creating new housing, new jobs are created in engineering, architecture, construction and related industries, and the funds for these developments add 'new' money to our economy, increasing [U.S. gross domestic product]."

The record includes information about FATCA from the U.S. Department of the Treasury, and documentation and articles relating to the "Agreement between the United States of America and [redacted] to Improve International Tax Compliance and to Implement FATCA." Additionally, the Petitioner submitted a "Summary of FATCA Reporting for U.S. Taxpayers" and "FATCA Information for Foreign Financial Institutions and Entities" from the Internal Revenue Service. The record also contains a report from the U.S. Department of State indicating that [redacted] is vulnerable to financial crimes such as money laundering, an article in *Real Deal* (a New York real estate news publication) about Brooklyn developers' inability to keep up with housing demand for condominiums, and information from the [redacted]'s website discussing the city's demand for affordable housing. The record therefore shows that the Petitioner's endeavor has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S.

⁵ Because the Petitioner qualifies for the underlying visa classification as a member of the professions holding an advanced degree, discussion of his eligibility as an individual of exceptional ability would serve no meaningful purpose.

workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable financial services for his employer and its clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field or the U.S. real estate industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.